IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.2.2005.

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITIONS No.17854 OF 1996 AND 1408 OF 2001.
& W.P.M.P.No.26882/2003

W.P.No.17854 OF 1996:

C.Vijayalakshmi ... Petitioner

Vs.

1. District Collector,
   Anna District at Kancheepuram

2. Deputy Director of Geology and
   Mining, 44, Gandhi Nagar II Street,
   Kancheepuram-631 501.

3. Tahsildar, Chengalpattu Taluk,
   Anna District.

4. L.Chandrasekara Reddy ... Respondents

W.P.No.1408 OF 2001:

C.Vijayalakshmi ... Petitioner

Vs.

1. District Collector,
   Kancheepuram.

2. Karuppa Chetty ... Respondents

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Writs of Mandamus filed under Article 226 of the Constitution of India for the reliefs as stated therein.

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For petitioner in both the W.Ps. : Mr.AR.L.Sundaresan

For R.1 to R.3 in W.P.17854/1996 & for R.1 in W.P. No.1408/2001 : Ms. V.Velumani, A.G.P.

For R.4 in W.P.17854/1996 : No appearance

For R.2 in W.P.1408/2001 : No appearance

* * *

COMMON ORDER

Both the above Writ Petitions have been filed by one and same petitioner. Originally, W.P.No.17854 of 1996 has been filed praying to issue a Writ of Mandamus directing the respondents 1 to 3 to permit the petitioner to continue her quarrying operations in Quarry No.4 located in an extent of 3.00.0 Hectares comprised in S.No.99/1 (Part), Keerapakkam Village, Chingleput Taluk, Anna District for the period ending with 31.3.2001 as per the lease agreement dated 15.11.1996 and also the sketch enclosed therein executed by the first respondent in favour of the petitioner without any alteration. In the said Writ Petition, the petitioner has filed W.P.M.P.No.26882 of 2003 (STILL PENDING, SINCE THE AGP SOUGHT TIME AS PER THE ENDORSEMENT DATED 19.4.2004) praying to amend the prayer to the effect of issuing a Writ of Mandamus directing the respondents 1 to 3 to hand over the quarry site of an extent of 3.00.0 hectares in S.No.99/1 in Keerapakkam village in Quarry No.4 as per the sketch annexed to the Lease Deed dated 15.11.1996 granted in favour of the petitioner by the first respondent and permit the petitioner to quarry stone therein for a full term of five years from the date of such handing over, on payment of the lease amount for the second and subsequent years and when it falls due in accordance with the other terms and conditions of the said Lease Agreement.

2. The other writ petition in W.P.No.1408 of 2001 has been filed praying to issue a Writ of Mandamus directing the first respondent to forthwith take appropriate action to stop illicit quarrying operations by the second respondent or any other person in Quarry No.4, Survey No.99/1-Part in Keerapakkam Village, Chengalpattu Taluk.

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3. The case of the petitioner in the first writ petition above is that the first respondent invited tenders by way of Gazette notice dated 9.10.1996 to participate in the auction conducted under Rule 8(1) of the Tamil Nadu Minor Mineral Concession Rules 1959 for leasing of quarrying rights of rough stone in Quarry No.4 for the period ending with 31.3.2001 situated in the Government poramboke land located in Chingleput Taluk, Anna District comprised in S.No.99/1 (Part), Keerapakkam village and she became the highest bidder with an offer of Rs.5,55,000/= in the auction held on 29.10.1996 and as per the auction conditions, she paid the entire amount of Rs.5,78,250/= including security deposit and area assessment charges and the first respondent also in his proceedings in R.C.No.1438/96 Q-1 dated 15.11.1996 directed her to enter into an agreement as per the Provisions of Rule 8 and accordingly she entered into a Lease Agreement dated 15.11.1996 with the first respondent and the same was registered on 20.11.1996 with the Sub Registrar, Guruvancherri in Document No.235/1996.

4. The further case of the petitioner is that the fourth respondent is a lessee in respect of Quarry No.3 which is located on the Northern side of her quarry and when the fourth respondent attempted to cross the boundary of the leased area, she successfully restricted the same and in spite of her complaint to the respondents 1 to 3, no action was taken against the fourth respondent; that the respondents 1 to 3 informed her that the fourth respondent has filed W.P.No.16292 of 1996 against them and some others wherein this Court has granted an order of status-quo on 14.11.1996 and taking advantage of the said order of status quo granted by this Court in W.M.P.No.22915 of 1996, the fourth respondent attempted to trespass into the petitioner's quarry and respondents 1 to 3 have failed to take any action as they misconstrued the order of this Court; that the fourth respondent has not impleaded the petitioner as a party to the said writ proceedings and hence she has filed the above writ petition.

5. The first respondent would file a counter thereby submitting that the petitioner has remitted the first year lease amount but not remitted the second and subsequent year lease amount; that subsequently, the petitioner filed a writ petition with a prayer that the boundaries of the area of the field has not been marked with reference to the sketch and stated that a portion of the area which was allotted to her has been encroached by the adjacent quarry lease holder the fourth respondent and prayed to direct the respondent to hand over the extent granted for a full term of five years; that in obedience to the directions of this Court in W.P.Nos.16292 of 1996 (Dismissed as infructuous on 11.2.2005) and W.P.No.17854 of 1996, the quarry area Nos.3 and 4 comprised in S.No.99 was inspected by the then Deputy Director of

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Geology and Mining on 1.4.1997 along with the firka Surveyor, Village Administrative Officer and at that time, the petitioners in both the above mentioned writ petitions i.e. the petitioner and the fourth respondent herein were present and boundaries were shown to both of them; that there was some error observed while demarcating the Quarry No.4 in the relevant sketch enclosed along with the agreement and it was rectified by the Tahsildar, Chengalpattu on 27.11.1996 in the presence of both the parties and the exact area had been shown to both the parties but the representative of the petitioner has refused to sign the statement and as ordered by this Court, the area of 3.00.0 Hectares was demarcated as per the sketch and shown to the full extent to the representative of the writ petition and as such there is no dispute in the area demarcated and sketch prepared by the Authority.

6. It has been further submitted in the counter that the fourth respondent was granted renewal of lease in Collector's Rc.838/Q1/90 dated 27.5.1994 for a period of three years in Quarry No.3 of Keerpakkam village over an extent of 27.20 acres and he has confined his quarry operation within his area as per the lease deed executed in this regard; that even after the settlement of the dispute, the petitioner still claimed a portion of the Quarry No.3 held by the fourth respondent and there is no legal entitlement for him in the area already granted in favour of the fourth respondent; that the fourth respondent was holding the quarry even after the expiry of the lease period in pursuance to the directions of this Court in W.P.No.18643 of 1996 and subsequently the said writ petition was dismissed on 23.2.1999 consequent to which the fourth respondent has stopped the quarry operations from 24.2.1999; that the petitioner has filed the above writ petition with a prayer to permit her to operate the Quarry No.4 located in the area in S.No.99/1 part over an extent of 3.00.0 hectares and in pursuance to the directions of the Honourable High Court, the petitioner was allowed to operate the quarry in Quarry No.4 and she was not prevented from quarrying in the above area; that furtherance to this issue, the petitioner has not remitted the lease amount for the second and subsequent periods so far and that she has ceased to be a lessee of the quarry thereafter; that Rule 36(5)(e) of the TNMMC Rules, 1959 it has also been clearly indicated that 'any person who has been permitted to quarry under a quarrying lease in any area shall use the area only for the purpose of quarrying the mineral specified in the quarrying lease. If any error or wrong description of the mineral is found in the order granting the quarrying permit or lease, it is liable to be corrected at any time and the permit holder shall not claim any right whatsoever, based on any such error found in the order'.

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7. This respondent would further submit that the error in the sketch has already been rectified and the boundaries were shown to the petitioner; that the petitioner is purposely demanding for operating the quarry after a lapse of six years on payment of the arrears of lease amount when there is no subsisting lease and it is legally unwarranted and infructuous and the period of lease also expired on 31.3.2001; that the Quarry Nos.11 and 12 in the same area has already been leased out in tender public auction during 2003 and the sale has fetched the lease amount of Rs.102.75 lakhs and 133 lakhs respectively whereas the lease amount paid by the petitioner for the first year is Rs.5,55,000/= which is very low when compared with the lease amount collected for the same area recently; that the petitioner is prolonging the issue with the intention to get more profit out of low investment and the action of the petitioner is badly hampered and the administration and Government would sustain heavy loss of revenue; that if such petitioners who defaulted in payment of the lease amount are allowed after a lapse of six to seven years, the first respondent will sustain loss of revenue and the administration of the Government will collapse and other lessees may also seek the remedy on the same way to obtain wrongful gains by giving false information and moreover, the existing lessees who have remitted crores of Rupees as lease amount cannot compete in the market and the prospect will be badly affected. On such grounds, this respondent would pray to dismiss the above writ petition.

8. The fourth respondent would also file a counter thereby denying the allegations of the petitioner and further submitting that while granting the lease to the petitioner, the Assistant Director of Geology and Mining, without measuring the above area, has simply drawn a plan and handed over possession to the petitioner herein and only when the petitioner attempted to enter into the quarry operated by this respondent, he approached this Court by way of W.P.No.16292 of 1996 and this Court by the order dated 14.11.1996 ordered status-quo to be maintained; that because of the high-handed action of the petitioner, a complaint was filed before the Inspector of Police, Otteri Police Station by this respondent for taking necessary action and requested that the petitioner should be prevented from trespassing into his quarrying site and a complaint was also lodged with the Tahsildar and Revenue Divisional Officer to prevent the petitioner from illegally trespassing into the quarrying site of this respondent and also requested the authorities to handover proper and correct area to both the parties to avoid any dispute; that based on the instructions given by the Collector and the Revenue Divisional Officer, the Tahsildar, Chenglpattu in his proceedings in Rc.No.6008/96/A1 dated 29.11.1996 has prepared a draft plan and sketch and re-measured and identified both the quarries in the presence of both the parties and the Tahsildar also forwarded the

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plan to the Collector and Revenue Divisional Officer and both the quarries have been clearly identified and there is no discrepancy with regard to measurement and location of the quarrying site; that the petitioner got quarrying lease very recently through public auction, whereas this respondent is carrying on quarrying operations ever since 1984 and got a valid lease till 26.5.1997; that this respondent has got quarrying right over an extent of 27.20 acres whereas the petitioner got quarrying lease measuring an extent of only 7.50 acres and hence there is no necessity for this respondent to trespass into the petitioner's quarry. On such averments, this respondent would also pray to dismiss the above writ petition.

9. In the second writ petition above, the petitioner, besides reiterating her stand taken in the first writ petition above, would submit that though the quarry was leased out in her favour, actual possession of the same has not yet been handed over to her in spite of the fact that W.P.No.16262 of 1996 filed by the said L.Chandrasekara Reddy having become infructuous and the order of status-quo granted therein has worked out in spite of the fact that W.P.No.18643 of 1996 was dismissed by this Court on 23.2.1999; that while so, the second respondent and a group of villagers under his leadership on 12.1.2001 midnight and thereafter performed poojas in various parts of the stone quarry and in spite of telegrams sent to the officials, no action has been taken and hence she has come forward to file this writ petition.

10. In the counter filed by the first respondent, besides reiterating the contents of the counter affidavit filed in the first writ petition above, they would further submit that there was no communication from the petitioner about the incident that took place on 12.1.2001 as alleged by her; that the petitioner was granted lease for five years commencing from 15.11.1996 to 31.3.2001; that she has remitted only the first year lease amount and therefore she has no legal right over the quarry already held by her and further lease granted to Chandrasekara Reddy in respect of Quarry No.3 was already over. On such averments, this respondent would pray to dismiss this writ petition.

11. During arguments, the learned counsel for the petitioner, besides reiterating the facts mentioned in the writ petitions would also cite a judgment of the Honourable Apex Court delivered in S.GANESAN vs. DISTRICT COLLECTOR, TIRUCHIRAPALLI reported in JT 2002 (3) SC 90. In the said case, in a case of lease to quarry sand jelly, the petitioner therein became the highest bidder depositing lease money for one year and an unsuccessful bidder filed a writ petition and obtained stay and in the meanwhile, the bid was confirmed, thereafter the writ petition was dismissed as infructuous and also due to expiry of lease period and therefore

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the highest bidder applied for lease in his favour, relying upon Rule 8-A, which was refused by the Collector on ground that the new rules had come into force and under the new rules, lease could not be granted in favour of the appellant and since the writ petition and the writ appeal filed against such a decision of the Collector also got dismissed, the petitioner therein has approached the Honourable Apex Court. In such a situation, the Honourable Apex Court has held:

> "In somewhat identical circumstances when a peculiar situatioon arose, this Court in V.Karnal Durai V. District Collector, Tuticorin and Anr. [JT 1998 (8) SC 301] taking note of the fact that for no fault of the appellant the lease period having expired, the lease could not be granted in his favour and, therefore, directed grant of lease of the land in question on appropriate terms. In this matter, land is still available for being leased as per letter of the Deputy Director (G&M), Tiruchirapalli to which we have adverted to earlier. In the circumstances arising in this case, we think the order made by the High Court in the writ petition and in the writ appeal should be set aside and the writ be allowed as was done in V.Karnal Durai's case but subject to the condition that the appellant shall make further payment in respect of the lease amount per year by enhancing the same by 50% of the earlier bid. This amount is fixed by us taking note of the fact that the money paid by the appellant has been with the respondent for more than a period of 5 years. All other terms shall be governed by the new rules. The department shall now give reasonable time to the appellant to deposit the amount of lease for the entire period of 3 years which shall not be less than four weeks from today."

Relying on the said judgment, the learned counsel for the petitioner would also seek to extend the same benefits in favour of the petitioner also.

12. In consideration of the facts pleaded, having regard to the materials placed on record, upon hearing the learned counsel for both and adhering to the law, at the outset, if a decision has to be arrived at legally on the pleadings and prayers of the writ petitions above, it must be spelt out that since the five year lease period had expired as on 31.3.2001, with that date onwards, no cause of action in the above writ petitions survives as a result of which on 1.4.2001 itself, the above writ petitions have become infructuous. Nor could this Court sit in the position and act as the licensing authority observing the statutory norms of licence so as to grant extension of the lease without the same

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being provided for. After all, it is a case which could have been expedited immediately after admission, fixing the date for final hearing and disposing f the main W.Ps. themselves. But not even a request seems to have been made on the part of the petitioner with the Court and in fact she never bothered about till the lease period of five years expired. Nor did she even pay the lease rent for years period. Therefore, there is nothing wrong in saying that with in her full knowledge, the petitioner herself having filed the W.P., left them to become infructuosus.

13. The learned counsel for the petitioner would argue that she has filed an amendment petition in W.P.M.P.No.26882 of 2003 to amend the prayer in the first writ petition above, seeking a different relief in the relief column in view of the writ petition becoming infructuous. To tell frankly, this amendment petition had been filed only on 21.7.2003. It is up to the learned counsel to clarify as to where does the question of considering the amendment petition filed in W.P.M.P.No.26882/2003 arise, admittedly in a writ petition which had as early as on 1.4.2001 itself had become infructuous. Therefore, in law, both the above writ petitions and the amendment petition become only liable to be dismissed and the same are decided accordingly.

14. On the part of the learned counsel for the petitioner, it would further be argued citing a judgment of the Honourable Apex Court delivered in S.GANESAN Vs. DISTRICT COLLECTOR, TIRUCHIRAPALLI reported in JT 2002 (3)SC 90. In the said case,an unsuccessful bidder in the auction had approached the Court by means of a writ petition and had also obtained a stay order against the successful bidder of the quarry lease as a result of which the Honourable Apex Court, following an earlier decision reported in JT 1998 (8) SC 301 and finding that a genuine party had been deprived of its legal rights, had thought that the genuine party must be given some relief and had directed the authorities concerned to give an extension of the lease so that he could get away from the heavy loss that had been inflicted on him for no fault committed on his part.

15. But, here is a case in which it is not by the other side these writ petitions have been filed as against the petitioner but by the petitioner herself and without the least attempt taken to expedite the hearing has come forward to say that her lease of five years had expired and therefore citing the above judgment of the Honourable Apex Court, would seek for an extension of lease. As it is well argued on the part of the respondent Government by the learned Additional Government pleader, the petitioner who has initiated the writ petition besides her own slackness for eight years to lapse, factually she had paid the lease amount for only the first year of lease and she never even bothered about effecting the payment of the lease rent for the subsequent four

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years and therefore it is a deliberate lapse committed on the part of the petitioner knowingly and wilfully and therefore factually the case of the Apex Court cannot compared with the facts of the case in hand and hence the conclusion that has been arrived at by the Honourable Apex Court in the above case cited, cannot be followed since the facts of that case are entirely on different footing and become inapplicable to the facts of the case in hand.

16. Further more, according to the Inspection Report submitted by the Deputy Director (Geology and Mining), Kancheepuram, the slight deviation in the alignment during the preparation of the sketch with reference to the North-south directions in the Quarry No.4 of the petitioner was rectified on 27.11.1996 itself and the area was demarcated properly in the presence of the petitioner and the fourth respondent in the first writ petition above was operating the said Quarry from 15.12.1996 onwards and enjoying the possession of the above quarry allotted in this area.

17. In these circumstances, all the possibilities are only in favour of deciding the matters first as infructuous thus confirming the above findings arrived at by this Court and since there is no room for this Court to interfere with falling in line with the Honourable Apex Court which has been arrived at under different facts and circumstances and hence the following order:

In result,

(i) Both the above Writ Petitions are dismissed as infructuous.

(ii) W.P.M.P.No.26882 of 2003 does not merit acceptance but becomes only to be dismissed and is dismissed accordingly.

However, in the circumstances of the cases, there shall be no order as to costs.

Rao/ks

Sd/
Asst.Registrar

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Sub Asst.Registrar

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Copies to:-

1. District Collector,
   Anna District at Kancheepuram.

2. Deputy Director of Geology & Mining,
   44, Gandhi Nagar II Street,
   Kancheepuram-631 501.

3. Tahsildar,
   Chengalpattu Taluk,
   Anna District.

+ 1 cc to Mr.AR.L.Sundaresan, Advocate SR No.7631

+ 1 cc to the Government Pleader, SR No.7258

common order in

W.P.Nos.17854/1996 & 1408/2001
& W.P.M.P.No.26882/2003

JRG(CO)
SR/8.3.2005

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